No. 80-946

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LOUISIANA AIRCRAFT, INC.,
Petitioner,

and

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA

versus

C. W. AYCOCK, SR., ADMINISTRATOR FOR THE ESTATE OF JAMES HENRY AYCOCK, DECEASED,

and

AILOUS S. ASHLEY, JOSEPHINE THOMPSON ASHLEY, MARY ELLA OWENS, SADIE LEE LINN, MILMA JOSEPHINE WISELOGEL, THELMA MAY FURLOW, LINBY RUTH BLAKLEDGE, BESSIE FAY STRAW, MARTHA ANN BONE, and WILLIAM M. ASHLEY,
Respondents.

On Writ of Certiorari to
The United States Court of Appeals
For the Fifth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Broadly stated, the proposition now pending before this Court is whether or not the United States Court of Appeals for the Fifth Circuit correctly interpreted the existant Mississippi law and correctly applied the same in reversing the United States District Court for the Southern District of Mississippi. The case turns upon the interpretation of the Mississippi Long Arm Statute §13-3-57 Miss. Code Ann. (1972) and §79-1-27 Miss. Code Ann. (1972) which deals with service upon a defendant who is a nonresident doing business in the state. Also necessarily involved is the interpretation of certain Mississippi Supreme Court decisions concerning the utilization of the Mississippi Long Arm Statute. The principal cases involved which concerned the Mississippi Long Arm Statute "doing business" section are the cases of *Mladinich v. Kohn*, 250 Miss. 138, 164 So.2d 785 (1964) and *Arrow Food Distributors v. Love*, 361 So.2d 324 (Miss. 1978), *cert. denied*, 439 U.S. 1073 (1979).

The Court of Appeals bottomed its reversal of the District Court upon its interpretation of *Arrow Food Distributors, Inc. v. Love, supra*, and held that Arrow holds that the cause of action need not arise from some purposeful act done by the Defendant Louisiana Aircraft *in* Mississippi. Further, the Court of Appeals stated that the District Court erred in treating the second *Mladinich v. Kohn, supra*, at 790, requirement as absolute, i.e., insisting upon a direct link between Louisiana Aircraft's business done in Mississippi and the plane crash.

The Fifth Circuit further stated that *Arrow* stands for the proposition that businessmen who do business in Mississippi or with Mississippi residents will be subject to personal jurisdiction in Mississippi courts, at least on causes of action *incident* to such business regardless of whether the action directly arose from a purposeful act done in Mississippi. (Petition Appendix B at 6a; 617 F.2d at 435).

Specifically, the petition presents the question of whether or not the District Court had personal jurisdiction over Louisiana Aircraft pursuant to the Mississippi Long Arm Statute "doing business" provision even though the "purposeful act" of the Defendant took place outside of Mississippi. As will be discussed *infra*, the Mississippi Supreme Court has already addressed the proposition and this same question has also been presented to this Court.

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BRIEF IN OPPOSITION

INTRODUCTION

Pursuant to Sup. Ct. R. 40(3), the requirements of Sup. Ct. R. 40(1)(a) and (b) have been deleted. However, Respondents deem it necessary to include a statement of the case and those items enumerated in Sup. Ct. R. 40(1)(c) and (d).

CONSTITUTIONAL PROVISIONS

Petitioners alleged that the Fourteenth Amendment to the Constitution of the United States is at issue. (Petition at 2-3). Respondents would submit, however, that there is no real constitutional question present, but rather only the question of whether the Court of Appeals' decision, *sub judice,* conflicts with applicable Mississippi law.

STATEMENT OF THE CASE

The decision of the United States Circuit Court of Appeals for the Fifth Circuit which the Petitioner requests this Court to review is a decision involving the application of the Mississippi Long Arm Statute. The Respondents C. W. Aycock, *et al.*, sought to utilize the Mississippi Long Arm Statute to obtain *in personam* jurisdiction over Louisiana Aircraft, a nonresident of the State of Mississippi domiciled in the State of Louisiana. Relying upon *Mladinich v. Kohn, supra,* the United States District Court for the Southern District of Mississippi denied jurisdiction over Louisiana Air-

craft because it found, *inter alia*, that the Defendant had not done some purposeful act in the State of Mississippi from which the Plaintiff's cause of action arose, even though Louisiana Aircraft did some business in Mississippi. (Petition Appendix B at 5a; 617 F.2d 432, 434).

The United States Circuit Court of Appeals for the Fifth Circuit reversed the District Court with respect to its construction of the doing business section of the Long Arm Statute and bottomed its decision upon the Mississippi Supreme Court decision in *Arrow Food Distributors v. Love, supra*. The Circuit Court found that personal jurisdiction existed over Louisiana Aircraft because (1) as the District Court found, Louisiana Aircraft did business of a systematic and ongoing nature in Mississippi; (2) the Plaintiff's cause of action was incident to that business activity; and (3) the assertion of jurisdiction over Louisiana Aircraft did not offend notions of fairness or substantial justice. (Petition Appendix B at 6a; 617 F.2d 432, 434-435).

REASON FOR DENYING THE WRIT

The Decision Of The Court Of Appeals Was Not A Decision Of An Important State Question In Conflict With Applicable State Law

The only conceivable basis for this petition would be that the United States Circuit Court of Appeals for the Fifth Circuit had decided an important state question in a way in conflict with applicable state law. (Sup. Ct. R. 19(b)). It is submitted, however, that a simple reading

of the opinion of the Court of Appeals clearly shows that its opinion is not in conflict with applicable state law.

The Fifth Circuit's opinion turned upon its interpretation of the Mississippi Supreme Court decision of *Arrow Food Distributors v. Love, supra,* which sanctioned the use of the Long Arm Statute in a situation wherein the "purposeful act" occurred outside the State of Mississippi and the act was incident[1] to the business done by the Defendant in the State of Mississippi.[2] It is the *Arrow* decision and not the opinion of the Fifth Circuit at issue here which engrafted any change, real or imagined, in the test set forth in *Mladinich v. Kohn, supra.*

The precise question presented to this Court by the petition of whether or not the Fifth Circuit misinterpreted the state law as set forth in *Mladinich v. Kohn* in holding that the purposeful act did not have to take place in the State of Mississippi as long as it was incident to the business done by the Defendant has heretofore been presented to this Court, as well as the Mississippi Supreme Court, in the form of petition for a

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1 The Court of Appeals obviously felt that the servicing of Piper Aircraft sold in Mississippi by Louisiana Aircraft was incident to the business done in Mississippi by Louisiana Aircraft as the Piper distributor for southern Mississippi. 617 F.2d 432 at 433, 435.

2 In *Arrow,* the appellant assigned as error in the Mississippi Supreme Court the lack of jurisdiction in the Chancery Court of Adams County, Mississippi founded upon the Long Arm Statute since the "purposeful act," i.e., a collision, took place outside the state of Mississippi. 361 So.2d 324 at 325-326.

writ of certiorari filed by Arrow Food Distributors, Inc. in Cause No. 78-729 and styled "Arrow Food Distributors, Inc., Petitioner, v. Lloyd F. Love, the Conservator of the Estate of William F. Riley, Jr., Respondent," which petition for certiorari was denied on January 8, 1979.[3] So the question of the proper application of Mississippi state law in this factual situation has been presented to both the Mississippi Supreme Court and to this Court. The decision of the Fifth Circuit Court of Appeals was, therefore, justified and was an accurate interpretation of Mississippi law.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Respondent most respectfully submits that the petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

JONES & MOCKBEE, P.A.

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3 In its petition for writ of certiorari to the Supreme Court of the State of Mississippi in Cause No. 78-729 on the docket of this Court, Arrow Food Distributors, Inc. asserted as one of its four reasons for the granting of the writ the following:

> IV. The Assumption of In Personam Jurisdiction Over the Defendant Violates Due Process in That the Cause of Action Arose Outside Mississippi and the Defendant Was Not Engaged in Continuous and Substantial Activity in Mississippi. Petition for Writ of Certiorari, Cause No. 78-729, at 16.

This Court denied the petition. 439 U.S. 1973.

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CERTIFICATE OF SERVICE

I, Walker W. Jones III, do hereby certify that on this the ____ day of January, 1981, three copies of this brief of Respondents in opposition were mailed postage prepaid to the following, to-wit:

Honorable Francis T. Zachary
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I further certify that all parties required to be served have been served.

WALKER W. JONES III